

WINDELS MARX LANE & MITTENDORF, LLP
Proposed Attorneys for Alan Nisselson, Interim Chapter 7 Trustee
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Attorneys appearing: Alan Nisselson (anisselson@windelsmarx.com)
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

MOVIEPASS, INC.,

Debtor.

Chapter 7

Case No. 20-10244-smb

**APPLICATION PURSUANT TO BANKRUPTCY CODE § 327(a) FOR AUTHORITY TO
RETAIN AND EMPLOY JOSEPH A. BRODERICK, P.C. AS ACCOUNTANT FOR THE
CHAPTER 7 TRUSTEE EFFECTIVE JANUARY 29, 2020**

**TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:**

Alan Nisselson (“**Trustee**”), interim trustee for the Chapter 7 estates (“**Estates**”) of Helios and Matheson Analytics Inc., *a/k/a MovieFone*, Case No. 10242-smb, Zone Technologies, Inc., *a/k/a Red Zone*, *a/k/a Zone Intelligence*, Case No. 20-10243-smb, and MoviePass, Inc., Case No. 20-10244-smb (collectively, “**Debtors**”), by his proposed attorneys, Windels Marx Lane & Mittendorf, LLP (“**Windels Marx**”)¹, respectfully submits this application (the “**Application**”) for an order authorizing the retention and employment of Joseph A. Broderick, P.C. (the “**Broderick Firm**”) as his accountant effective as of January 29, 2020.²

In support of the Application, the Trustee respectfully represents as follows:

¹Simultaneously with the filing of this Application, the Trustee is filing applications to retain Windels Marx as his attorneys in each Debtor’s Chapter 7 case.

²Simultaneously with the filing of this Application, the Trustee is filing similar applications for authority to retain the Broderick Firm as his accountant in each Debtor’s Chapter 7 case.

A. Jurisdiction; Venue; Statutory Bases for Relief

1. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the Southern District of New York dated January 31, 2012 (Preska, C.J.). Venue of this case and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 327(a) of title 11, United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) and Rules 2014 (a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule**” or “**Rules**”).

B. Procedural Background

2. On January 28, 2020 (the “**Petition Date**”), the Debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code, by its counsel, Togut, Segal & Segal LLP (“**Togut Segal**”).

3. Thereafter, pursuant to Bankruptcy Code § 701(a), the UST appointed the Trustee as interim trustee of the Debtors’ Estates.

4. The Trustee has reviewed the Debtors’ petitions, schedules, statements of financial affairs, and related documents. In addition, on January 31, 2020, on behalf of the Trustee, attorneys of Windels Marx met with Togut Segal attorneys, Debtors’ acting Chief Financial Officer Robert Damon, and Joseph A. Broderick of the Broderick Firm at the Debtors’ office located at 350 Fifth Avenue, New York, New York 10022 to discuss the details and issues concerning Debtors’ financial condition.

C. The Retention of Joseph A. Broderick, P.C. as Accountant to the Trustee

5. By this Application, the Trustee seeks this Court's approval, pursuant to Bankruptcy Code § 327(a) and Bankruptcy Rule 2014, to retain and employ the Broderick Firm as his accountant effective as of January 29, 2020.

6. The Trustee has selected the Broderick Firm to act as the Trustee's accountant because of the Broderick Firm's vast knowledge of and experience in bankruptcy practice.

7. The Trustee anticipates that the services he will require from the Broderick Firm will include, *inter alia*: (i) conducting a review of the Debtors' books and records; (ii) reviewing and preparing an analysis of Debtors' pre-petition transfers and transactions; (iii) assisting in the review of claims and, if necessary, objections thereto; (iv) preparing the Debtors Estates' tax returns and obtaining acceptances of such returns from the taxing authorities; and (v) assisting with such other matters as the Trustee or counsel to the Trustee may request from time to time.

8. The Broderick Firm has begun a review the review of the Debtors' books and records.

9. The Broderick Firm has advised the Trustee that it estimates that the fees and expenses for performing the services set forth above will be between \$25,000.00 and \$50,000.00.³

10. The Trustee has selected the Broderick Firm because of its excellent reputation and expertise in matters of this kind. As more fully set forth in the supporting affidavit of Joseph A. Broderick, CPA sworn to on February 3, 2020 (the "**Broderick Affidavit**"), the Broderick Firm has expertise in bankruptcy and insolvency proceedings and can assist the Trustee in various essential functions.

³The amount of fees and expenses incurred by the Broderick Firm will depend on the extent the Trustee requires the Broderick Firm's assistance, and the effort expended by the Broderick Firm in obtaining necessary documentation, reviewing and analyzing the Debtors' books and records and pre-petition transfers and transactions, preparing the Debtors' tax returns, obtaining approval of the tax returns from the taxing authorities, and performing such other tasks as the Trustee may require.

11. The Trustee believes that the Broderick Firm is well qualified and able to perform these services.

12. To the best of the Trustee's knowledge, neither the Broderick Firm nor any of his employees has any connection with the Debtors, their creditors, or any party in interest or their respective attorneys or accountants, except as set forth in the Broderick Affidavit.

13. To the best of the Trustee's knowledge, the Broderick Firm does not represent or hold any interest adverse to the Estates in the matters upon which it is to be engaged, and is a disinterested person whose employment would be in the best interest of the Debtors' Estates.

14. As set forth in the Broderick Affidavit, no payments have been made to the Broderick Firm for services rendered, or to be rendered, in connection with this case. The Broderick Firm has not received a retainer.

15. The Broderick Firm will request payment upon appropriate application to the Court in accordance with Bankruptcy Code §§ 330 and 331 and the applicable Bankruptcy Rules and Local Bankruptcy Rules of this Court. Pursuant to Bankruptcy Code § 330(a)(1)(A), the Court may award reasonable compensation for actual and necessary expenses and services rendered in conjunction with the Debtors' cases.

16. The Broderick Firm's customary hourly rates for services now in effect are as follows:

Partners	\$350.00
Seniors	\$190.00
Staff/Paraprofessionals	\$100.00

17. Ten business days prior to any increases in the Broderick Firm's rates, for any individual employed by the Broderick Firm and retained by the Trustee providing services in this

case, the Broderick Firm shall file a supplemental affidavit with the Court setting forth the basis for the requested rate increase pursuant to Bankruptcy Code § 330(a)(3)(F).

WHEREFORE, the Trustee respectfully requests that the Court enter an Order authorizing his retention and employment of the Broderick Firm as accountants for the Trustee effective January 29, 2020, and for such other and further relief as the Court deems just.

Dated: New York, New York
February 3, 2020

Respectfully submitted,

Alan Nisselson, *Interim Chapter 7 Trustee*

By: /s/ Alan Nisselson
Alan Nisselson (anisselson@windelsmarx.com)
WINDELS MARX LANE & MITTENDORF, LLP
A Member of the Firm
156 West 56th Street
New York, New York 10019
Telephone: (212) 237-1000

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

MOVIEPASS, INC.,

Debtor.

Chapter 7

Case No. 20-10244-smb

**AFFIDAVIT OF JOSEPH A. BRODERICK IN SUPPORT OF APPLICATION
PURSUANT TO BANKRUPTCY CODE § 327(a) FOR AUTHORITY TO
RETAIN AND EMPLOY JOSEPH A. BRODERICK, P.C. AS ACCOUNTANT
FOR THE CHAPTER 7 TRUSTEE EFFECTIVE JANUARY 29, 2020**

STATE OF NEW YORK)
) S.S.:
COUNTY OF SUFFOLK)

JOSEPH A. BRODERICK, being duly sworn, deposes and says that:

1. I am a Certified Public Accountant, duly licensed to practice in the State of New York.

2. I am the sole shareholder of Joseph A. Broderick, P.C. (the “**Broderick Firm**”) which maintains an office at 734 Walt Whitman Rd., Suite 204, Melville, New York 11747.

3. I make this affirmation in support of the application (the “**Application**”) of Alan Nisselson (the “**Trustee** interim trustee for the Chapter 7 estates (“**Estates**”) of Helios and Matheson Analytics Inc., *a/k/a MovieFone*, Case No. 10242-smb, Zone Technologies, Inc., *a/k/a Red Zone*, *a/k/a Zone Intelligence*, Case No. 20-10243-smb, and MoviePass, Inc., Case No. 20-10244-smb (collectively, “**Debtors**”), for an order pursuant to section 327(a) of title 11, United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule**” or “**Rules**”), authorizing

the retention and employment of the Broderick Firm as his accountant in this Chapter 7 case effective as of January 29, 2020.⁴

4. The Broderick Firm has been practicing in the accounting profession for many years, and is well versed and experienced in the review of books and records and preparation of tax returns of debtors in insolvency matters.

5. The Broderick Firm has no relation to or business association with the Trustee, any attorney, creditors, the Debtor, or any other party to the proceedings, except that deponent may have been retained in other matters in which some of the aforesaid persons have been parties.

6. The Broderick Firm is a disinterested person within the meaning of Bankruptcy Code § 327(a), and neither affiant nor any member of the Broderick Firm holds or represents any interest adverse to the Debtors' Estates.

7. The Broderick Firm is disinterested as that term is defined in Bankruptcy Code § 101(14).

8. Neither the Broderick Firm nor any member of my firm has any claims against the Debtors.

9. The Broderick Firm has no connection with the United States Trustee or any person employed in the Office of the United States Trustee.

10. I understand that the Trustee anticipates that the services he will require from the Broderick Firm will include, *inter alia*: (i) conducting a review of the Debtors' books and records; (ii) reviewing and preparing an analysis of Debtors' pre-petition transfers and transactions; (iii) assisting in the review of claims and, if necessary, objections thereto; (iv)

⁴Simultaneously with the filing of this Application, the Trustee is filing similar applications for authority to retain the Broderick Firm as his accountant in each Debtor's Chapter 7 case.

preparing the Estates' tax returns and obtaining acceptances of such returns from the taxing authorities; and (v) assisting with such other matters as the Trustee or counsel to the Trustee may request from time to time.

11. The Broderick Firm has begun to review the Debtors' books and records.

12. The Broderick Firm has advised the Trustee that it estimates that the fees and expenses for performing the services set forth above will be between \$25,000.00 and \$50,000.00.⁵

13. The Broderick Firm will request payment upon appropriate application to the Court in accordance with Bankruptcy Code § 330 and the applicable Bankruptcy Rules and Local Bankruptcy Rules of this Court. Pursuant to Bankruptcy Code § 330(a)(1)(A), the Court may award reasonable compensation for actual and necessary expenses and services rendered in conjunction with the Debtors' cases.

14. The Broderick Firm's customary hourly rates for services now in effect are as follows:

Partners	\$350.00
Seniors	\$190.00
Staff/Paraprofessionals	\$100.00

15. No payments have been made to the Broderick Firm for services rendered, or to be rendered, in connection with the Debtors' cases. The Broderick Firm has not received a retainer.

⁵The amount of fees and expenses incurred by the Broderick Firm will depend on the extent the Trustee requires the Broderick Firm's assistance, and the effort expended by the Broderick Firm in obtaining necessary documentation, reviewing and analyzing the Debtors' books and records and pre-petition transfers and transactions, preparing the Debtors' tax returns, obtaining approval of the tax returns from the taxing authorities, and performing such other tasks as the Trustee may require.

16. Subject to the approval of this Court, the source of all compensation for professional services to be rendered on behalf of the Trustee shall be funds of the Debtors' Estates.

17. No agreement exists between the Broderick Firm and any other party for the sharing of compensation to be received by the Broderick Firm in connection with services rendered in this case.

WHEREFORE, the Broderick Firm respectfully requests that the Court enter an Order authorizing his retention and employment of the Broderick Firm as accountants for the Trustee effective January 29, 2020, and for such other and further relief as the Court deems just.

Sworn and subscribed to before me on this 3 rd day of February 2020 <u>/s/ Nancy Kelly</u> Nancy Kelly Notary Public, State of New York No. 01KE6346538 Qualified in Nassau County Term Expires 8/15/2020	JOSEPH A. BRODERICK, P.C. <i>Proposed Accountant to the Interim Chapter 7 Trustee</i> <u>/s/ Joseph A. Broderick</u> Joseph A. Broderick, CPA (jabroderick2001@yahoo.com) 734 Walt Whitman Rd. Melville, NY 11747 Telephone: (631) 462-1779
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